U.S. Citizenship and Immigration Services

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Employment-Based Adjustment of Status FAQs

The employment-based (EB) annual limit for fiscal year (FY) 2024 will be higher than was typical before the pandemic, though lower than in FY 2021-2023. We are dedicated to using as many available employment-based visas as possible in FY 2024, which ends on Sept. 30, 2024.

Frequently Asked Questions

Close All Open All

Recent Developments

Q. Can you estimate how many employment-based immigrant visas USCIS and the Department of State (DOS) used during FY 2023?

A. DOS determined that the FY 2023 employment-based annual limit was 197,091, due to unused family-based visa numbers from FY 2022 being added to the employment-based limit for FY 2023. In addition, 6,396 EB-5 visas carried over from FY 2022 to FY 2023 in the reserved subcategories. By the end of the fiscal year on Sept. 30, 2023, preliminary estimates suggest that the agencies used all of these employment-based immigrant visas, apart from 10,874 EB-5 visas that Congress has allowed to carry over to the next fiscal year. Of these, USCIS and the Executive Office for Immigration Review (EOIR) approved more than 145,000 employment-based adjustment of status applications for individuals already present in the United States. *(Added 12/8/2023)*

Q. Can you estimate how many employment-based immigrant visas USCIS and DOS will use during FY 2024?

A. DOS currently estimates that the FY 2024 employment-based annual limit will be approximately 161,000, due to unused family-sponsored visa numbers from FY 2023 being added to the employment-based limit for FY 2024. In addition to the 161,000 overall limit, in the EB-5 category there are 10,874 extra visas available that Congress has allowed to carry over from the previous2 fiscal years. USCIS, with its partners at DOS, is committed to using all the available employment-based visas in FY 2024. USCIS will continue to take multiple, proactive steps in coordination with its partners at DOS to achieve this goal.

Note: Our Immigration and Citizenship Data “All USCIS Application and Petition Form Types” and “Application for Adjustment of Status (Form I-485)” quarterly reports do not provide a comprehensive

picture of employment-based visa use. The quarterly reports do not include the visas issued by our partners at DOS, and before FY 2023 they included the 4th preference employment-based categories under "other." The quarterly "Legal Immigration and Adjustment of Status" reports published by the DHS Office of Immigration Statistics include adjustments of status but capture immigrant admissions at ports of entry rather than immigrant visa issuance by DOS, and as a result do not reflect year-to-date visa use. Neither report can be used to determine the number of employment-based immigrant visas used during a quarter. Also, USCIS reminds the public that, as noted in the Monthly Immigrant Visa Issuance Statistics reports webpage published by DOS, "individual monthly issuance reports should not be aggregated, as this will not provide an accurate issuance total for the fiscal year to date." *(Added 12/8/2023)*

Q. How many family-sponsored or employment-based immigrant visas did USCIS and DOS use during FY 2022?

A. The Department of State (DOS) determined that the FY 2022 employment-based annual limit was 281,507 – more than double the typical annual total – due to unused family-based visa numbers from FY 2021 being allocated to the next fiscal year's available employment-based visas. By the end of the fiscal year on Sept. 30, 2022, the agencies used all of these employment-based immigrant visas, apart from 6,396 EB-5 visas that Congress has allowed to carry over to the next fiscal year. Of these, USCIS and the Executive Office for Immigration Review (EOIR) approved more than 220,000 employment-based adjustment of status applications for people already present in the United States.

DOS determined that the FY 2022 family-sponsored annual limit was 226,000. By the end of the fiscal year on Sept. 30, 2022, the agencies had used 168,917 of the available visas. Of these, USCIS and EOIR approved more than 12,000 family-sponsored adjustment of status applications for individuals already present in the United States. The approximately 57,000 unused family-sponsored visa numbers from FY 2022 are added to the FY 2023 employment-based limit. *(Updated 03/22/2023)*

Q. Would you please summarize the changes we see in the October 2023 Visa Bulletin?

A. With the start of fiscal year 2024, DOS can begin allocating employment-based visa numbers from the FY 2024 limit, estimated to be 161,000. As a result, we see a measure of recovery from the retrogressions of FY 2023 in all categories. Every Final Action Date in the Visa Bulletin has advanced from its level in September 2023 (or remained the same), and on Oct. 1, 2023, USCIS and DOS began completing the adjudication of applications filed by noncitizens for whom visas became available. *(Updated 12/8/2023)*

Q. Why have the dates in some categories in the October 2023 Visa Bulletin not advanced sufficiently to allow new applications?

A. USCIS and DOS have significant volumes of employment-based adjustment of status and immigrant visa applications in their inventories. For some categories, including EB-2 and EB-3 for noncitizens chargeable to India, the agencies already have sufficient applications on hand to use up all of the available visas for FY 2024 and several fiscal years in the future. INA 203 requires that DOS make "reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year…and to rely upon such estimates in authorizing the issuance of visas." In addition, INA 245 requires, among other things, an immigrant visa to be "immediately available" at the time an application for adjustment of status is filed. Given these statutory provisions, when the agencies already have enough inventory to use several years' supply of immigrant visas in a particular

category, it is not reasonable to advance the dates in the Visa Bulletin to allow the filing of new applications. *(Added 9/15/2023)*

Q. What does the October 2023 Visa Bulletin reveal about fiscal year 2024 and future fiscal years?

A. As the agencies rebuild normal operations following the COVID-19 pandemic, fewer unused family-based immigrant visa numbers are carrying over to increase the number of available employment-based immigrant visas in FY 2024. In the years ahead, once there are no more unused family-based numbers, the annual number of available employment-based immigrant visas should return to 140,000.

This limit, established by Congress more than three decades ago, is insufficient to meet the demand for employment-based immigrant visas in every category. Barring a change to the statute or an unexpected reduction in noncitizens seeking employment-based immigrant visas, noncitizens from all countries can expect to see longer waits for immigrant visas.

Within EB-1, the category remains “Current” for noncitizens chargeable to countries other than India and China and the Final Action Dates have advanced for both India and China compared to the September 2023 Visa Bulletin.

Within EB-2, demand for visas from noncitizens chargeable to countries other than India and China is so high that for the first time ever, the category is not “Current” for such applicants at the beginning of a fiscal year.

The same is true in EB-3, where demand from countries other than India and China is very high and so the category will not be “Current” for such applicants at the beginning of the fiscal year for the first time since FY 2018. The Final Action Dates for noncitizens chargeable to India and China in this category have advanced, reflecting the available visas for FY 2024.

As has been true for the past few years, high demand in the EW (Other Worker) category from noncitizens chargeable to countries other than India and China means that such noncitizens will still face a significant wait for visa availability.

In EB-4, the Final Action Dates for noncitizens chargeable to all countries has advanced.

Visas will continue to be available to all noncitizens chargeable to countries other than India and China in the EB-5 category. Noncitizens chargeable to China will continue to benefit from the special statutory exception to the per-country levels in the EB-5 category, and this is reflected by the advancing dates in the Visa Bulletin. The dates for noncitizens chargeable to India in the EB-5 category have also advanced but the category is not “Current,” reflecting the fact that increased demand in the EB-5 category by such noncitizens is greater than the available supply of visas. *(Added 9/15/2023)*

Q. With increasingly long waits for employment-based immigrant visas for noncitizens from every country and in most categories, what has USCIS done to help those affected?

A. We are committed to working with Congress to find durable solutions to address the imbalance between the high demand for immigrant visas and the decades-old annual statutory limits. We continue to emphasize that this imbalance needs to be addressed and that only Congress can alleviate the statutory constraint on immigrant visa numbers.

At the same time, we continue to pursue policy and regulatory changes to bring greater certainty, stability, and protection for employer-sponsored noncitizens (as well as self-petitioners, special immigrants and immigrant investors) in the United States. Recent such measures include:

- Establishing (PDF, 352.94 KB) a 5-year validity period for employment authorization documents (EADs) issued to noncitizens with pending adjustment of status applications, effective Sept. 27, 2023;
- Clarifying (PDF, 352.53 KB) eligibility criteria for O-1A and O-1B individuals of extraordinary ability;
- Updating (PDF, 316.12 KB) USCIS Policy Manual guidance regarding eligibility for the EB-1 Extraordinary Ability and Outstanding Professor or Researcher visa categories;
- Clarifying (PDF, 379.49 KB) eligibility for EB-2 individuals of exceptional ability and advanced degree holders with national interest waivers;
- Updating (PDF, 345 KB) the USCIS interpretation of the Child Status Protection Act to prevent some child beneficiaries from aging out of child status and allowing them to adjust immigration status with their parents;
- Clarifying (PDF, 317.81 KB) the evidence required for physicians seeking a national interest waiver of the job offer requirement;
- Clarifying (PDF, 282.22 KB) eligibility criteria and standards for applications for compelling circumstances employment authorization documents (EADs);
- Clarifying (PDF, 288.53 KB) eligibility for J-1 exchange visitor status;
- Clarifying options for workers whose employment has terminated, either voluntarily or involuntarily, to remain in the United States while securing new employment;
- Updating and expanding the list of degree fields qualifying noncitizen graduates of U.S. universities for STEM optional practical training (OPT);
- Clarifying (PDF, 498.85 KB) that USCIS considers certain E-1, E-2, E-3 and L-2 nonimmigrant dependent spouses employment authorized incident to status, such that they are not required to apply and wait for an EAD, and applying the automatic extension of employment authorization for renewal EAD applications filed by these E and L spouses as well as certain H-4 spouses;
- Establishing a process for healthcare and childcare workers to make an expedited request for processing of initial EAD applications that have been pending for more than 90 days, or renewal applications that would expire within 30 days or have already expired;
- Expanding premium processing to all filers of Form I-140, Immigrant Petition for Alien Workers, and certain filers of Form I-765, Application for Employment Authorization, and Form I-539, Application to Extend/Change Nonimmigrant Status, while adhering to the congressional requirement that such services must not cause an increase in processing times for regular immigration benefit requests;
- Launching a new online form for individuals, attorneys, and accredited representatives to request an in-person appointment at their local field office without having to call the USCIS Contact Center. *(Updated 12/8/2023)*

Q. How successful have the agencies been in using the available employment-based visas?

A. For every fiscal year since FY 2007, with the exceptions of FY 2020 and FY 2021, USCIS and DOS have either used all of the available employment-based visas or fallen short by less than 1% of the annual limit. The 2-year period between FY 2020-2021 saw significantly higher than usual annual limits, and the shortfall of visa use in these fiscal years was caused by a shortage of financial resources and COVID-19 pandemic-related operational restrictions, which impacted visa processing. Despite these challenges, USCIS approved more employment-based adjustment of status applications in FY 2020 than in any of the previous 6 years. This trend continued through FY 2021, when USCIS approved what was at the time the second highest number of employment-based adjustment of status applications in the history of the agency. As described above, USCIS and DOS utilized all available employment-based immigrant visa numbers in FY 2022 and FY 2023.

Q. Did DOS retrogress (set back) certain Final Action Dates or apply new Final Action Dates in the Visa Bulletin for October 2022?

A. In the case of the October 2022 Visa Bulletin, without a retrogression of the Final Action Date for India EB-2, visa use by the two agencies would likely have exceeded the available visas within the first few weeks of the fiscal year, in violation of the statute. In setting the first Visa Bulletin of the fiscal year each October, DOS makes reasonable estimates of the available employment-based immigrant visas in each category. It then, in collaboration with USCIS, reviews the pending inventory of adjustment of status and immigrant visa applications, makes reasonable estimates of new applications, estimates how many of the pending and newly filed applications are likely to result in visa use during the fiscal year, and compares those values to the available visas.

When estimating how many pending or newly filed applications are likely to result in visa use during a fiscal year, the agencies consider a variety of factors, including but not limited to:

- The potential that a certain percentage of applications will not be approved;
- Accounting for noncitizens who have multiple pending adjustment of status applications in different categories;
- Estimating and considering the number of family members who may decide to immigrate with the principal applicant;
- Considering where applications are in the adjudication process and how likely they are to result in visa use in the immediate future; and
- Adjustment of status applicants with multiple pending or approved immigrant visa petitions in different EB categories who may decide to transfer between categories based on which category seems most advantageous to them.

When the amount of demand for a particular category (or a country within a category) exceeds the supply of visa numbers available, the category/country is considered “oversubscribed” and DOS applies a cut-off date in the Final Action Dates chart to ensure that visa use remains within the annual limits, as well as the category and per-country limits and order of consideration, as established by Congress. *(Updated 12/8/2023)*

Q. Why did DOS retrogress the India EB-3 Final Action Date in the July 2023 Visa Bulletin?

A. DOS has answered this question in Item F of the July 2023 Visa Bulletin and in a further clarifying notice at Travel.State.Gov. *(Added 06/16/2023)*

Retrogression

Q. Why do the dates in the Visa Bulletin sometimes retrogress?

A. Congress explicitly directs DOS to "make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within [the family-sponsored, employment-based and diversity categories] and to rely upon such estimates in authorizing the issuance of visas." See INA 203(g). DOS makes such estimates, and the Visa Bulletin reflects those "reasonable estimates." However, these are estimates, and DOS, working collaboratively with USCIS, cannot know exactly how many individuals may ultimately apply for adjustment of status or an immigrant visa or have their applications approved. The demand for visas for adjustment of status depends on the response of noncitizens to the Visa Bulletin and the demand for immigrant visas depends on the response to the DOS Welcome Letter issued by the National Visa Center. Visa availability for a particular category or country can also change throughout the year through the fall up/fall down provisions (explained in the Allocation of Visa Numbers section on this page), through lower (or higher) use of family-sponsored visas (for example, by noncitizens chargeable to India or China), and through lower (or higher) than anticipated demand from applicants chargeable to countries other than India or China.

This balancing act is a result of Congress allowing DOS to rely on "reasonable estimates of the anticipated numbers of visas to be issued" while setting very strict and detailed annual limits and rules for the distribution of visas. Congress created a system in which DOS must regularly adjust the population of noncitizens who can potentially be issued visas (set by the Final Action Dates) in order to create sufficient demand for such visas (allowing the agencies the best chance to use all of the visas) while also restricting the issuance of such visas (to ensure that visa issuance remains within the limits established by Congress).

When the demand for visas is higher than estimated and/or the availability of visas is lower than estimated, this may require retrogression of a Final Action Date to ensure that visa use remains within the limits established by Congress and that visas within a particular queue (based on category and country of chargeability) are generally allocated to those with the earliest priority dates as possible. *(Added 10/26/2022)*

Q. Why, as DOS noted in Part F of the August 2023 Visa Bulletin, do so many noncitizens chargeable to India have pending applications in the EB-1 category with older priority dates?

A. It is common for noncitizens to have approved immigrant visa petitions in multiple categories, particularly when a noncitizen faces a significant wait for an available visa. Over time, a noncitizen may develop additional skills or qualifications that make them eligible to be the beneficiary of a petition in one of the EB-1 subcategories. Such noncitizens may decide to self-petition or have an employer file a petition on their behalf in EB-1, particularly if it would result in becoming an LPR much more quickly than in EB-2 or EB-3 visa categories. Under 8 CFR 204.5(e), a noncitizen who is the beneficiary of multiple approved employment-based petitions in these categories may use the earliest priority date, with some exceptions. Many noncitizens from India with priority dates in 2012 through 2015 have pursued this option and as a result, the agencies' pending inventory has a significant volume of such applications. (*Added 07/14/2023)*

Q. Does retrogression affect my priority date or place in line for an immigrant visa?

A. If a noncitizen is seeking a visa in a preference category that required a labor certification from the Department of Labor (DOL), their priority date generally is the date DOL accepts the labor certification application for processing. For all other employment-based preference categories, the priority date generally is the date USCIS accepts the underlying petition for processing. Retrogression does not affect your priority date or your place in line for an immigrant visa. You may still receive a visa when one becomes available to you based on that priority date. Retrogression only means that due to the high demand for visas exceeding the statutory limits, visas are not available to all noncitizens who want them, even if they have already filed an application for adjustment of status.

Q. My category retrogressed or a Final Action Date was applied. What is my path forward to a Green Card?

A. When a visa becomes available to you in the future based on the Final Action Date for your country and category as compared to your priority date, USCIS will be able to approve your adjustment of status application if you are admissible, merit a favorable exercise of discretion, and are otherwise eligible. While your I-485 application for adjustment of status is pending, you are eligible to seek certain benefits, among which are:

- You may apply for employment authorization, which, if granted, is not tied to a particular employer, position, or job classification, and is currently granted in increments of up to 5 years;
- You may apply for advance parole, which, if granted, authorizes you to travel outside of the United States during the advance parole validity period (also now 5 years) and apply for parole into the United States upon your return (at a U.S. port of entry) without abandoning your adjustment of status application;
- If your employment-based adjustment of status application has been pending with USCIS for 180 days or more, you may request to "port" the underlying job opportunity upon which your adjustment is based to a new employer or new job offer that is the same or similar to the original one without the portability request alone impacting your priority date;
- Depending on the facts of your case, your children who have also applied for adjustment of status as your derivative beneficiaries might not age out of eligibility to adjust status as your derivative beneficiaries; and
- You are generally considered to be "in a period of stay authorized" while your application is pending and would not accrue unlawful presence while "in a period of authorized stay."

Please note that USCIS is making every effort to reduce processing times for employment authorization and advance parole applications. *(Updated 12/8/2023)*

Q. If my adjustment of status application was approved, but then the Final Action Date for my category and country of chargeability later retrogresses, does that affect my status as a lawful permanent resident?

A. Retrogression has no effect on lawful permanent residents. *(Added 10/26/2022)*

Q. Does retrogression affect consular processing?

A. Yes. DOS and USCIS are only authorized to issue immigrant visa numbers (for purposes of consular processing or adjustment of status) if the applicant in the given family-sponsored or employment-based preference category has a priority date that is earlier than the date shown in the Final Action Dates chart of the Visa Bulletin for their country of chargeability and immigrant visa category (or the

Visa Bulletin shows that the category is current, that is, visa numbers are authorized for issuance to all qualified applicants). *(Added 10/26/2022)*

Q. How does retrogression of the Final Action Dates affect eligibility for exemption from the 6-year limit on H-1B status?

A. Under INA 214(g)(4), the period of "authorized admission" as an H-1B nonimmigrant "may not exceed 6 years." However, there are certain exemptions to this limitation, including the exemption established by Congress in section 104(c) of the American Competitiveness in the Twenty-First Century Act (PDF) and codified in regulation in 8 CFR 214.2(h)(13)(iii)(E). Under that exemption, USCIS may grant additional periods in H-1B status in increments of up to 3 years for a noncitizen who currently maintains or previously held H-1B status, who is the beneficiary of an approved EB-1, EB-2, or EB-3 immigrant visa petition, and who is eligible to be granted lawful permanent resident (LPR) status (also known as obtaining a Green Card) in one of those categories but for the application of the per country limitation. If an applicant for adjustment of status is otherwise eligible for the exemption and does not have an immigrant visa available to them in EB-1, EB-2, or EB-3 due to the application of the per-country limitations of INA 202(a)(2), USCIS may grant additional periods in H-1B status in increments of up to 3 years. *(Added 10/26/2022)*

Q. Does retrogression, the issuance of a Request for Evidence or Notice of Intent to Deny, or the scheduling of an interview reset the 180-day portability clock?

A. No. For more information about portability, please see Volume 7, Part E, Chapter 5 of the USCIS Policy Manual. *(Added 10/26/2022)*

Q. Do biometrics "expire" due to retrogression?

A. No, the biometrics collected by USCIS in connection with a pending adjustment of status application never "expire." While biometrics-based background checks are valid for a period of 15 months, USCIS refreshes the background check associated with the pending adjustment of status application by resubmitting the previously provided biometrics; a new biometrics appointment is not required. *(Added 10/26/2022)*

Allocation of Visa Numbers

Q. How are unused family-sponsored visa numbers from the previous fiscal year that are added to the employment-based limit in the current fiscal year distributed, given the per-country limits?

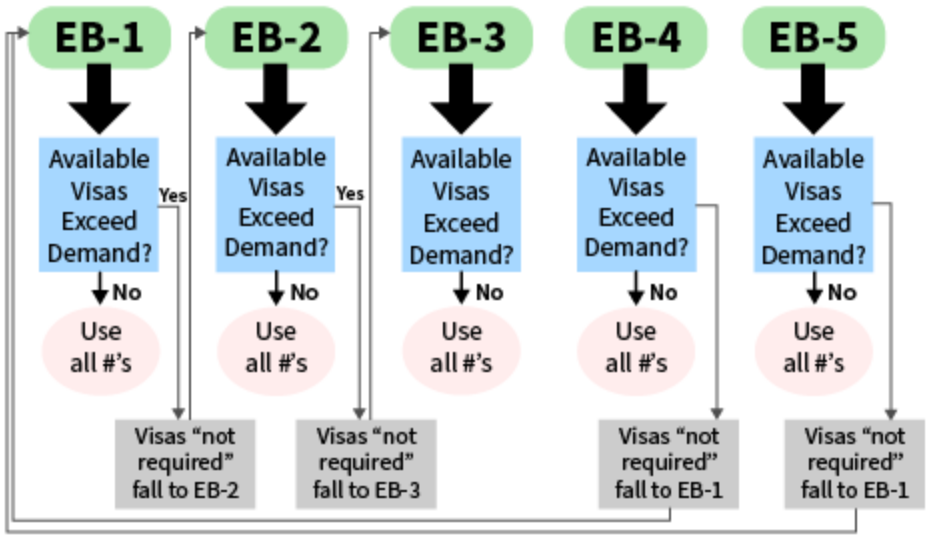
A. Under INA 201(d)(2), the unused family-sponsored visa numbers from the previous fiscal year are added to the overall employment-based limit. Under INA 203(b), that overall employment-based limit is then divided between the 5 employment-based preference categories based on the fixed percentages as described above. However, within each employment-based category, the visas are still distributed with the per-country limits in effect, *unless* the exception to the per country limits of INA 202(a)(5) applies within that category. This exception is explained in detail in this section of the FAQ. The unused family-sponsored visa numbers added to the employment-based limit in the subsequent fiscal year are not automatically distributed to applicants with the earliest priority dates because the per-country limits still apply. *(Updated 12/8/2023)*

Q. If a category/country is "Current" in the Visa Bulletin, does that mean that there must be little or no inventory of pending applications with USCIS and DOS for that category/country?

A. No. A category can be "Current" in the Visa Bulletin even when there are tens of thousands of applications pending with the agencies. "If there are sufficient [remaining visa] numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered 'Current.'" See DOS's The Operation of the Immigrant Numerical Control System (PDF). For example, if EB-2 has 49,000 visas available for applicants from countries other than India and China, and there are 48,000 pending applications, then the category can be "Current." *(Added 10/26/2022)*

Q. If visas are "not required" in a particular employment-based category, are they made available in the other employment-based categories?

A. Congress has established statutory provisions that allow for the flow of visas "not required" in certain employment-based categories to be made available to applicants in other employment-based categories. These are commonly referred to as the "fall up/fall down" provisions. Under INA 203(b), visas not required in EB-4 and unreserved visas not required in EB-5 are made available in EB-1. Visas not required in EB-1 are made available in EB-2, and visas not required in EB-2 are made available in EB-3. Congress did not create a pathway in the statute for visas not required in EB-3 to be made available in another employment-based category. Please note that with the enactment of the EB-5 Reform and Integrity Act of 2022 on March 15, 2022, Congress established special rules for the carryover of certain unused EB-5 visas from one fiscal year to the next. As a result, not all EB-5 visas that are "not required" in that category can be made available in EB-1. DOS, in collaboration with USCIS, considers every month if visas may be "not required" in a particular employment-based category based on reasonable estimates, and sets the dates in the Visa Bulletin accordingly. This can happen as early as the first month in a fiscal year, depending on the underlying data. For example, in FY 2021 it was clear from the beginning of the fiscal year that a significant number of visas would not be "required" in EB-1 and the dates for EB-2 in the October 2020 Visa Bulletin reflected the reasonable estimate that visas would "fall down" to EB-2. As another example, in early FY 2022 it was clear that a significant number of visas would "fall up" from EB-5 to EB-1, and "fall down" from EB-1 to EB-2, and the dates in the Visa Bulletin reflected these reasonable estimates. Below is a visual representation of the "fall up/fall down" provisions. *(Updated 03/22/2023)*



Q. Why does USCIS not allow noncitizens to apply for adjustment of status based on the Dates for Filing chart every month of the year?

A. When we determine that there are immigrant visas available for the filing of additional adjustment of status applications, noncitizens must use the Dates for Filing chart to determine when to file an adjustment of status application with USCIS. Otherwise, use the Final Action Dates chart to determine when to file an adjustment of status application with us. We make this determination monthly based on how many visa numbers remain available for the year, USCIS and DOS visa-available inventory, and operational considerations.

Q. When does the special exception to the per-country levels for the employment-based categories apply?

A. Under INA 202(a)(5)(A), if the total number of visas available in one of the employment-based categories for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available in that category will be issued without regard to the per-country numerical limitation. This can happen as early as the first day of a fiscal year, depending on the relevant data. USCIS understands that there are some misconceptions about this topic, and states again that this special exception to the per-country levels applies (if the statutory criteria are met) in any quarter of a fiscal year, not just in the fourth quarter. For example, in the October 2022 Visa Bulletin, EB-1 was "Current" for all countries of chargeability, indicating that the exception applies (based on reasonable estimates) and that visas in that category are being issued without regard to the per-country numerical limitation, benefitting applicants chargeable to India and China. Please note that if DOS has established a worldwide Final Action Date for an immigrant visa category, DOS has estimated that the total number of visas available in that category is less than the number of qualified immigrants who may otherwise use such visa numbers. *(Updated 03/22/2023)*

Q. How do the agencies apply the quarterly limits to visa allocation in the family-sponsored and employment-based preference categories?

A. INA 201(a)(2) states that employment-based immigrants who may be issued immigrant visas or who may otherwise acquire LPR status are limited to 27% of the worldwide EB annual limit in each of the first 3 quarters of the fiscal year. The quarterly limits do not apply to individual categories or

countries; they apply to the use of all employment-based immigrant visas as a whole. For example, in the first quarter, the agencies could use 50% of the visas available in the EB-4 category, provided that overall use across all the EB categories did not exceed 27%. There is no quarterly allocation of visas for a specific country or category. As a result, there is no additional batch of visa numbers allocated to a particular country or category (for example, India EB-2) at the start of each quarter and the Final Action Dates established in the Visa Bulletin generally reflect the annual category and per-country limits. The same is true for the family-sponsored categories, as stated in INA 201(a)(1). *(Added 03/22/2023)*

Q. When is a visa number subtracted from the annual limit?

A. A visa number is subtracted from the annual limit when DOS issues an immigrant visa to a noncitizen through consular processing or when a noncitizen acquires lawful permanent resident status upon approval of their application for adjustment of status, either with USCIS or EOIR of the U.S. Department of Justice. A visa number is not subtracted from the annual limit based on any other preliminary step in the adjudication process (that is, not at the time of filing, not at the time of interview scheduling, not at the time of transferring to a USCIS field office, not with the issuance of a Request for Evidence, not with the approval of the underlying immigrant visa petition, not with the granting of a transfer of underlying basis request, etc.). There is also no reservation or pre-allocation of a visa number to an applicant at any of these procedural steps. If USCIS has approved an adjustment of status application for a principal applicant, but the applications of dependent family members remain pending, immigrant visa numbers have not yet been subtracted from the annual limit for the dependent family members. *(Updated 03/22/2023)*

Q. What is cross-chargeability and how does USCIS apply it?

A. In certain situations, an applicant may benefit from the charging of their visa number to their spouse's or parent's country of birth rather than their own. This is known as cross-chargeability, and is found in INA 202(b).

In practice, cross-chargeability is used where the preference quota category is backlogged for one spouse's country of chargeability but a visa is available for the other spouse's country of chargeability. The principal applicant may cross-charge to the derivative spouse's country, and the derivative spouse may cross-charge to the principal's country.

Derivative children may cross-charge to either parent's country as necessary. Parents may not cross-charge to a child's country. In other words, the principal applicant or derivative spouse may never use their child's country of birth for cross-chargeability.

Whenever possible, USCIS applies cross-chargeability to preserve family unity and allow family members to immigrate together.

For more information, please see the USCIS Policy Manual, Volume 7, Part A, Chapter 6. *(Added 10/26/2022)*

Q. When USCIS uses the phrase "visa available" when referring to pending applications for adjustment of status, what does this mean?

A. When USCIS uses the phrase "visa available" in reference to a pending adjustment of status application, it means that the applicant in the given family-sponsored or employment-based preference category has a priority date that is earlier than the date shown in the Final Action Dates

chart of the Visa Bulletin for their country of chargeability and immigrant visa category (or the Visa Bulletin shows that the category is current, that is, visa numbers are authorized for issuance to all qualified applicants). Please note that just because a visa is available for issuance to an applicant does not mean that the applicant has been allocated a visa. *(Added 10/26/2022)*

Q. How does USCIS determine if an immigrant visa is "immediately available" when considering whether to accept or reject an adjustment of status application?

A. Under the regulations, an immigrant visa in the family-sponsored and employment-based preference categories "is considered available for accepting and processing" the adjustment of status application "if the applicant has a priority date…which is earlier than the date shown in the [Visa] Bulletin" for their country and category (or the Visa Bulletin shows that the category is current, that is, visa numbers are authorized for issuance to all qualified applicants). See 8 CFR 245.1(g)(1). To make this determination, USCIS consults the appropriate chart in the Visa Bulletin (Final Action Dates or Dates for Filing) for the month when the application was received at the correct USCIS filing location per the form instructions. USCIS posts which charts may be used on its Adjustment of Status Filing Charts from the Visa Bulletin. Only the publication of a revised Visa Bulletin for a month would alter USCIS' decision about accepting or rejecting an application due to visa availability.

Please note that accepting or rejecting a benefit request is part of USCIS intake processing; it is not the approval or denial of the benefit request by an adjudicator. *(Added 10/26/2022)*

Q. What is the difference between the Dates for Filing chart and the Final Action Dates chart?

A. The Final Action Dates charts indicate when an applicant may be scheduled for a consular interview and when their case may be processed to completion by DOS or USCIS. Immigrant visa numbers can be authorized for issuance only for an applicant whose priority date is earlier than the Final Action Date for their category and country of chargeability (or the category is Current).

The Dates for Filing charts indicate when an application is within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the Date for Filing for their category and country of chargeability (or the category is Current) may assemble and submit required documents to the DOS National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. For noncitizens interested in pursuing adjustment of status, USCIS may allow them to apply for adjustment based on the Dates for Filing chart. This is a monthly determination. and we announce this on our website. *(Added 9/15/2023)*

Family Members

Q. When is a derivative child's applicant age locked under the Child Status Protection Act, and how is that age calculated?

A. In the employment-based preference categories, a child's age under the Child Status Protection Act (CSPA) is the child's biological age at the time of visa availability less the amount of time that the underlying petition was pending, but only if the child sought to acquire status as a lawful permanent resident within one year of the date a visa is available. For more information about when a visa is

considered available for CSPA purposes, as well as other details about CSPA, please see Volume 7, Part A, Chapter 7 of the USCIS Policy Manual.

Q. When USCIS adjudicates a principal applicant's adjustment of status application, does USCIS also adjudicate the adjustment of status applications of the dependent family members? What if dependent family members are not approved before priority dates move back?

A. USCIS makes every effort to adjudicate the principal and derivative family members at the same time, but this is not always possible. Two things that applicants can do to help USCIS adjudicate a family's applications together are:

- Providing as much of the information requested in the section of Form I-485 titled "Information About Your Immigrant Category" as possible; and
- Ensuring that all applications include the required evidence for each family member.

If we deem approvable a Form I-485 of a derivative family member and a visa number is not available based on the Final Action Dates chart in the Visa Bulletin at the time we make that determination, the application will remain pending until a visa number is available, DOS allocates a visa, and USCIS completes the adjudication.

Please note that when INA 203(d) states that a derivative family member "shall…be entitled to the same status, and the same order of consideration…if accompanying or following to join" the principal applicant, it means that a derivative has the same priority date (order of consideration) and same immigrant visa category as the principal applicant. It does not mean that the derivative spouse or child always receives a visa or adjusts status on the same date as the principal applicant. This is clear from the language about "accompanying or following to join," which allows a derivative to receive an immigrant visa or adjust status after the principal applicant. For more information about derivative applicants and "accompanying or following to join," please see Volume 7, Part A, Chapter 6 of the USCIS Policy Manual. *(Updated 03/22/2023)*

Q. If I applied for adjustment of status as a principal applicant, and my spouse applied as my dependent family member, but now visas are unavailable for us based on my petition but they are available based on a petition filed for my spouse, may we transfer our pending adjustment of status applications to her petition?

A. Yes. In a situation like this, where both spouses have one or more petitions that could serve as the underlying basis for their adjustment of status applications, they can request to transfer the underlying basis from a petition filed on behalf of one spouse to a petition filed on behalf of the other if the new immigrant visa category allows for dependent spouses. For example, the couple could not transfer to a petition filed in an immediate relative category where dependents are not permitted under the statute. This is different from cross-chargeability, which is when an applicant may benefit from the charging of their visa number to their spouse's or parent's country of birth rather than their own. For more information about cross-chargeability, please see the Allocation of Visa Numbers section on this page. *(Added 10/26/2022)*

Q. If I applied for adjustment of status as a principal applicant but my spouse or children did not apply at the same time as I did, may they apply for adjustment of status in the future?

A. Yes, if they are otherwise eligible. Derivative family members may accompany or follow to join a principal applicant and may apply for adjustment of status (or an immigrant visa) while the principal

applicant's application is pending or after the principal applicant has become an LPR. However, the derivative family member must meet the eligibility requirements to file for adjustment of status, including that an immigrant visa is immediately available to them at the time they file their application. As a result, if a visa is no longer available to the family member due to retrogression or the application of a Final Action Date, they must wait for a visa to again become available before they are eligible for adjustment of status. If the principal beneficiary becomes an LPR and loses their LPR status or naturalizes before the derivative family member's adjustment of status, the derivative is no longer eligible for the classification as an accompanying or following-to-join family member. A family member may be eligible for LPR status as the spouse, child, or adult son or daughter of a U.S. citizen. *(Added 9/15/2023)*

Transfer of Underlying Basis

Q. What is a transfer of the underlying basis of an adjustment of status application?

A. An adjustment of status applicant whose application is based on a particular immigrant category occasionally prefers to have the pending application considered under another category. For example, an applicant who applied for adjustment of status concurrently with an employment-based petition in one preference category may want to transfer the underlying basis of their Form I-485 to a new employment-based petition filed by a different employer in a different preference category. There is no fee associated with submitting a request to transfer the underlying basis of your Form I-485, and you do not have to submit a new adjustment of status application with your transfer request. You may also transfer the underlying basis of your Form I-485 from the new petition back to your original petition, or to another petition, by submitting a new transfer request. For more information about transferring the underlying basis of your adjustment of status application, see Volume 7, Part A, Chapter 8 of the USCIS Policy Manual. *(Added 03/22/2023)*

Q. How does the transfer of underlying basis request process work?

A. We have created a centralized location for the receipt of transfer of underlying basis requests between the employment-based preference categories that are accompanied by a Form I-485 Supplement J. You may submit your written request and completed Supplement J to:

U.S. Postal Service (USPS):

USCIS
Attn: Supp J
PO Box 660834
Dallas, TX 75266-0834

FedEx, UPS, and DHL deliveries:

USCIS
Attn: Supp J (Box 660834)
2501 S. State Hwy. 121 Business
Suite 400
Lewisville, TX 75067-8003

You should only send transfer requests accompanied by a Supplement J to this address. Do not send other forms, documents, or evidence to this address.

Employment-based transfer requests that are not accompanied by a Supplement J should be submitted in writing to the USCIS office with jurisdiction over your pending I-485 application.

If you have already submitted a transfer request to a USCIS office, you should not submit a new request. All requests to transfer the underlying basis already received or that will be received at a USCIS office will be processed as usual by the USCIS office with jurisdiction over your pending Form I-485.

For transfer requests accompanied by Supplement J submitted to this address at the Dallas Lockbox, we scan the documents, upload the Supplement J information into our systems (generating a receipt notice), and notify the office or service center that currently holds the related adjustment of status application that the scanned request is available in our electronic systems. A USCIS officer reviews the transfer request and will grant or deny the request as a part of the adjudication of the adjustment of status application.

A receipt notice does not mean that USCIS has granted the transfer request, it just indicates that USCIS has uploaded the Supplement J information into our systems. USCIS does not notify the applicant when it grants a transfer request. *(Updated 10/26/2022)*

Q. How does a transfer of underlying basis request affect the calculation of a child's age under the Child Status Protection Act (CSPA)?

A. As stated in Volume 7, Part A, Chapter 7 of the USCIS Policy Manual, "[i]f an applicant has multiple approved petitions, the applicant's CSPA age is calculated using the petition that forms the underlying basis for the adjustment of status application." When we approve a request to transfer the underlying basis of the pending adjustment of status application, we calculate the CSPA age using the approved petition that forms the new basis of the adjustment application. If we transfer an applicant's underlying basis, then we calculate an eligible applicant's CSPA age using the applicant's age at the time the immigrant visa becomes available in the new category minus the time the immigrant petition that forms the new basis of the adjustment of status application was pending. *(Updated 03/22/23)*

Q. If the immigrant visa petition underlying my pending adjustment of status application has not been adjudicated, will this prevent me from transferring the basis to a different petition?

A. No. If you have a pending petition, that does not prevent us from granting a request to transfer the underlying basis of your pending Form I-485 to a different Form I-140.

Q. Why must applicants request to transfer the underlying basis of their pending Form I-485? Why does USCIS not review its records and make the decision for the applicants?

A. The decision to grant a transfer request is made in the discretion of USCIS. If we grant the transfer request, we will adjudicate the Form I-485 application based on the petition to which the Form I-485 was transferred. If we do not grant the transfer request, we will adjudicate the Form I-485 application based on the petition associated with the Form I-485 application prior to the transfer request.

We do not presume to know whether an adjustment of status applicant would like to transfer their pending Form I-485 application from the petition on which it is currently based to a different petition.

We require transfer requests to be in writing from the applicant to ensure that the record accurately reflects the basis on which the applicant requests us to adjudicate the adjustment of status application.

To highlight the importance of applicants making this decision themselves and communicating it to us, here is an example. Consider a noncitizen with a pending Form I-485 who does not have an available visa based on the underlying petition. They have an older approved petition in a different preference category where a visa is available to them. However, the petition was filed over 10 years ago, and the noncitizen no longer has a relationship with the potential employer, or the employer may no longer exist or no longer be willing to employ the noncitizen. As a result, the noncitizen could not adjust status based on that petition.

Q. What happens when an EB-3 I-140 downgraded petition is pending and attached to a still-pending Form I-485? Is it true that the EB-3 I-140 does not have to be approved to allow a transfer of underlying basis of the Form I-485 to an approved EB-2 I-140 where the EB-2 priority date is earlier than the Final Action Date for the relevant category and country of chargeability?

A. A pending EB-3 petition in this scenario does not prevent USCIS from granting the applicant's request to transfer the underlying basis of their pending Form I-485 to a separate, approved Form I-140.

Q. If USCIS has granted my transfer of underlying basis request, does it mean that an immigrant visa has been allocated to me?

A. No, USCIS granting an applicant's transfer of underlying basis request does not mean that an immigrant visa has been allocated to the applicant. For more information about transfer of underlying basis, please see Volume 7, Part A, Chapter 8 of the USCIS Policy Manual. *(Added 10/26/2022)*

Q. If USCIS grants my transfer of underlying basis request, will USCIS consider my eligibility for adjustment of status on both bases? For example, if I applied for adjustment of status based on an EB-3 petition and USCIS granted my transfer request to an EB-2 petition, will USCIS consider my eligibility on either petition?

A. No, if USCIS grants an applicant's transfer of underlying basis request, USCIS will only adjudicate the adjustment of status application on the most recently granted transfer request. If an employment-based adjustment of status applicant wants to transfer to another basis, they must submit a new transfer request. In this example, USCIS would only consider the applicant's eligibility for adjustment on the basis of the EB-2 petition, unless the applicant again requested a transfer to a third basis. *(Added 10/26/2022)*

Filing and Processing Questions

Q. If I am applying for adjustment of status, should I submit Form I-693 with my Form I-485?

A. USCIS strongly encourages adjustment of status applicants to submit Form I-693, Report of Immigration Medical Examination and Vaccination Record, with their Form I-485, Application to Register Permanent Residence or Adjust Status. Doing so will help limit the need for USCIS to send

Requests for Evidence, reduce processing times, and aid USCIS as it works with DOS to use all available visas. (*Updated 12/8/2023)*

Q. If I did not file a Form I-693 with my pending Form I-485, should I send one in now or wait for USCIS to request it, and why?

A. Noncitizens with pending adjustment of status applications should not send an unsolicited Form I-693 to us. Given the rapid movement of files between directorates and offices as we strive to optimize resources across the agency, it would be difficult to match an unsolicited Form I-693 with the related adjustment of status applications in a timely and efficient manner. This could delay the adjudication of adjustment of status applications while Forms I-693 are matched up to adjustment applications. We are proactively identifying employment-based adjustment of status applications with available visas that lack a valid Form I-693 and contacting applicants directly to request that form.

If your underlying petition is approved and a visa is available to you, but you know that your previously filed Form I-485 does not have a valid Form I-693, it will help USCIS use the available visas and adjudicate your application if you visit a civil surgeon and have a valid Form I-693 on hand when we send the request to you.

Q. My immigrant visa petition has been approved and I have a pending adjustment of status application. What happens next?

A. USCIS transfers adjustment of status applications in the first three employment-based preference categories from the Texas Service Center (TSC) and Nebraska Service Center (NSC) to the National Benefits Center (NBC) after the approval of the petition. The Field Operations Directorate will adjudicate the adjustment of status applications. (*Updated 12/8/2023*)

Q. Under what circumstances does the National Benefits Center (NBC) adjudicate employment-based adjustment of status applications?

A. The NBC is responsible for the final adjudication of EB I-485s that have been reviewed by an officer in the field or at a service center where the case is eligible for approval but for the fact that the visa is unavailable. Cases meeting this criterion are referred to as “regressed visa cases.” Regressed visa cases are sent to the NBC where a review is conducted to ensure information is properly captured in USCIS systems, the records are complete, and to confirm the visa is unavailable. When a visa becomes available (either through a Visa Bulletin update or through a change of visa classification to one with an available visa) and DOS has allocated an immigrant visa number, NBC will adjudicate the case to completion.

Additionally, in other contexts and under certain conditions, if a case is located at the NBC and meets the interview waiver criteria, the NBC may adjudicate to completion. Examples of other instances in which the NBC may adjudicate a Form I-485 to completion include cases reopened on service motion where the denial was issued by NBC, cases associated with litigation, or other time sensitive cases.

Q. My employment-based adjustment of status application is currently at the TSC or NSC. Do the published processing times for the TSC or NSC show how long it will take to process my application?

A. The TSC and NSC are responsible for adjudicating employment-based petitions. Upon approval of the petitions, adjustment of status applications in the first three employment-based preference

categories are then generally sent to the NBC and are adjudicated by the Field Operations Directorate. Only a few adjustment applications in EB-1, EB-2, and EB-3, usually with complex fact patterns and extended procedural histories, will remain at TSC and NSC for adjudication. Since very few adjustment applications in the first three employment-based preference categories are being adjudicated at the TSC and NSC, while those service centers are actively adjudicating EB-4 adjustment applications, the published processing times for adjustment of status applications at those service centers do not provide applicants in those first three categories with relevant information to estimate how long it will likely take to process their applications. If you have a pending employment-based adjustment of status application in the first three categories, the agency-wide fiscal year to date median processing time, available on uscis.gov at Historic Processing Times, would be the most relevant processing time information.

Q. Will my application for adjustment of status be processed faster if I submit my employment-based petition separately and then submit the application for adjustment of status the following day?

A. No. Before the adjudication of an application for adjustment of status, the underlying employment-based petition must first be approved at the TSC or NSC. Applications filed for adjustment of status in the first three employment-based preference categories are sent to the NBC with their approved underlying employment-based petitions as part of the adjudication process, whether they are filed separately or concurrently. An adjustment of status application sent to the NBC cannot be adjudicated until the employment-based petition at the TSC or NSC has been adjudicated. For this reason, submitting the employment-based petition separately from the adjustment of status application does not result in an applicant receiving an earlier decision on their Form I-485.

Q. If I have more than one pending application for adjustment of status, and USCIS approves one of them, what does it do with the others?

A. If a noncitizen has become a lawful permanent resident, USCIS would deny any other pending adjustment of status applications. *(Added 10/26/2022)*

Q. What does a "Case Remains Pending" message mean in the USCIS Case Status Online tool and is USCIS proceeding with the adjudication of applications displaying this message?

A. A "Case Remains Pending" message in the USCIS Case Status Online tool indicates that an officer reviewed the application and determined that it could not be approved on that date because DOS could not allocate a visa number. Once a visa number can be allocated, USCIS will resume the processing of the application but not every action that USCIS takes on an application results in a change in the message displayed in the online case status. If the applicant has submitted a transfer of underlying basis request, USCIS will continue processing that request and moving the application forward in the adjudication process. *(Updated 03/22/2023)*

Q. Why do some adjustment of status applicants see the status of their applications change to "Case Was Updated to Show Fingerprints Were Taken" in the USCIS Case Status Online tool when they had provided biometrics months earlier?

A. This notification is made automatically as a result of an internal update made to USCIS systems. For example, more than 100,000 applicants who had previously provided biometrics received this automatic update in October and November 2022 and some applicants continue to see such

automatic updates. USCIS received these applicants' biometrics previously and still has them associated with their applications in its systems. If you received this notice as a result of the automatic update, your case will continue to be processed per standard procedures. *(Updated 12/8/2023)*

Q. Why do adjustment of status applicants who have lived in the United States for many years have to demonstrate that they are not inadmissible under the health-related grounds of INA 212(a)(1)?

A. USCIS may only adjust the status of a noncitizen to lawful permanent residence under INA 245(a) if the noncitizen demonstrates that they are "admissible to the United States for permanent residence." The statutory language relating to both adjustment of status and the health-related grounds of inadmissibility require USCIS to apply those grounds of inadmissibility to all adjustment of status applicants regardless of the number of years they have already lived in the United States in other statuses (with a limited exception for immunizations for certain adopted children 10 years of age or younger). USCIS cannot create a waiver or exemption from the health-related grounds of inadmissibility where Congress has not done so. *(Updated 10/26/2022)*

Q. Why does USCIS conduct interviews for employment-based adjustment of status applications when a visa is not currently available under the Final Action Dates chart in the Visa Bulletin?

A. USCIS conducts interviews for some employment-based adjustment of status applications even though a visa is not currently available under the Final Action Dates chart in the Visa Bulletin to ensure that USCIS can expediently approve those applications when a visa does become available and DOS has allocated an immigrant visa number. Visa availability is not the only consideration for the eligibility of an applicant for adjustment of status, and only after USCIS has determined in its discretion that an application is approvable do USCIS officers request a visa from DOS. In some cases, USCIS will issue written notices in the form of a Request for Evidence (RFE) to request initial or additional evidence to determine an applicant's eligibility for adjustment of status. By conducting interviews before a visa is immediately available, officers can address any eligibility concerns and issue an RFE, if needed. If the applicant fails to demonstrate eligibility for adjustment of status, or that the applicant merits a favorable exercise of discretion, USCIS can deny the application. If the application is approvable but for the lack of an available visa, when a visa becomes available and DOS allocates the visa, USCIS can approve the application without an additional delay.

Q. Some noncitizens, particularly in the employment-based preference categories, have multiple pending adjustment of status applications. Can USCIS identify these in its inventory, and do the agencies take these multiple applications into account when setting the dates in the Visa Bulletin?

A. Yes, we can identify multiple adjustment of status applications filed by the same noncitizen (whether as a principal applicant or a derivative applicant) and do take them into account when collaborating with DOS on the Visa Bulletin. In FY 2023, the volume of duplicate applications within the Final Action Dates established in the Visa Bulletin was very low and had no significant impact on the analysis. As of Oct. 2, 2023, of the pending employment-based adjustment of status applications with USCIS, approximately 3% were duplicates or multiple applications filed by the same noncitizen. For noncitizens chargeable to India, approximately 4% were duplicate applications. Narrowing it further to only EB-2 and EB-3 applications filed by noncitizens chargeable to India, approximately 5% were duplicate applications. Please note that these percentages apply to the entire inventory of

pending employment-based adjustment of status applications with USCIS, not just those applications with available visas on Oct. 2, 2023. *(Updated 12/8/2023)*

Q. Does USCIS have a target value for employment-based adjustment of status inventory that carries over from one fiscal year into the next?

A. No, USCIS does not have a target value for its inventory of employment-based adjustment of status applications for the beginning of a fiscal year. While a reasonable volume of pending applications allows USCIS to maintain a steady pace of adjudications in the first quarter of a fiscal year, the volume that is pending merely reflects where applications may be in the multi-step adjudication process and general visa availability rather than the result of deliberately preparing inventory for the new fiscal year.

Q. Why does USCIS not adjudicate all pending adjustment of status applications where the applicants have available visas during a given month?

A. USCIS and its partners at DOS are committed to using all of the available employment-based visas during this fiscal year, as we are every year, but that visa use cannot happen within one month or even one quarter given statutory (in particular the quarterly limit of 27% found in INA 201(a)(2)) and operational limitations. Generally, visas are available under the Final Action Dates chart to more noncitizens than DOS and USCIS can approve within a given month or quarter due to operational considerations. When setting the Final Action Dates, the agencies consider a variety of factors, including but not limited to:

- The potential that a certain percentage of applications will not be approved;
- Accounting for noncitizens who have multiple pending adjustment of status applications in different categories;
- Estimating and considering the number of family members who may decide to immigrate with the principal applicant;
- Considering where applications are in the adjudication process and how likely they are to result in visa use in the immediate future; and
- Adjustment of status applicants with multiple pending or approved immigrant visa petitions in different EB categories who may decide to transfer between categories based on which category seems most advantageous to them.

Q. I have a pending adjustment of status application based on an approved employment-based immigrant visa petition with an associated job offer. Must I work for the petitioning employer while my adjustment of status application is pending? Am I required to be working in the same occupational field as the job offer while my application is pending? Would a period of unemployment while my application is pending affect my eligibility for adjustment of status?

A. Noncitizens with pending adjustment of status applications are not required to work, or ever have worked, for their petitioning employer. An employer who petitions for a noncitizen worker is doing so prospectively. In other words, by filing the I-140 petition, the prospective employer declares their desire and intent to employ the noncitizen upon the noncitizen becoming an LPR. The noncitizen who is the beneficiary of the petition is not required to work for the petitioning employer before the petition is filed, while the petition is pending, or while the adjustment of status application is pending. However, when applying for adjustment of status, the applicant must demonstrate that the

employer still intends to offer them the job and that they intend to accept the job when they become an LPR.

The noncitizen is not required to be employed in the occupational classification of the prospective job while their adjustment of status application is pending in order to be eligible for adjustment of status based on the petition.

Finally, a noncitizen with a pending adjustment of status application based on a prospective job offer may be unemployed while their adjustment of status application is pending and, depending on the facts involved, may remain eligible for adjustment of status. However, a period of employment in an occupational classification different from the prospective job or a period of unemployment may affect a noncitizen's current immigration status and could raise doubts about the continued validity of the job offer and/or the noncitizen's intention to accept the offered position after adjustment. *(Added 9/15/2023)*

Q. I have a challenging relationship with my petitioning employer, and I am worried that they may withdraw the petition. What effect would the withdrawal of the petition have on my petition, priority date, and pathway to adjustment of status?

A. The petitioner may request to withdraw a Form I-140 at any time. However, if the petitioner requests to withdraw a Form I-140 that has already been approved for at least 180 days, or if an associated Form I-485 has been pending for at least 180 days, USCIS will not revoke the approved Form I-140 and the beneficiary will retain the priority date from the Form I-140.

If you already have a Form I-485 that has been pending for at least 180 days, you may be eligible for portability under INA 204(j) based on a new job offer in the same or similar occupational classification.

If you have not yet filed Form I-485 or your Form I-485 has not been pending for at least 180 days, while you retain the priority date from the approved petition you would need a different Form I-140 petition filed and approved on your behalf in order to adjust status under the employment-based first, second or third preference categories.

Note: You have a right to be protected from retaliation regardless of your immigration status; for more information visit: https://www.worker.gov/. Additional information regarding DHS support of the enforcement of labor and employment laws, including protection for noncitizen workers who report violations of labor law, may be found at DHS Support of the Enforcement of Labor and Employment Laws. *(Updated 12/8/2023)*

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Last Reviewed/Updated: 12/08/2023